

Assembly Bill No. 21

CHAPTER 14

An act to amend Section 625 of the Public Utilities Code, relating to energy.

[Approved by Governor October 11, 2001. Filed
with Secretary of State October 12, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 21, Canciamilla. Public utilities: eminent domain: certificate of public convenience and necessity.

Existing law requires a public utility that offers competitive services and that wants to exercise its power of eminent domain to condemn any property for the purpose of competing with another entity in the offering of those competitive services, to first obtain from the Public Utilities Commission a finding that the action would serve the public interest. Existing law requires the commission, before making that finding, to conduct a hearing in the local jurisdiction that would be affected by the proposed condemnation, and authorizes the commission to make the finding if the commission makes a specified determination.

This bill would require the commission, at the request of a public utility gas corporation, to hold a local hearing as part of the procedure to issue a certificate of public convenience and necessity. The bill would provide to the commission, if the commission holds public hearings during the certification procedure for the purpose of making the determination described above, an additional 45 days beyond the date of any otherwise applicable statutory or regulatory deadline for making a determination.

The people of the State of California do enact as follows:

SECTION 1. Section 625 of the Public Utilities Code is amended to read:

625. (a) (1) (A) For the purpose of this article, except as specified in paragraph (4), a public utility that offers competitive services may not condemn any property for the purpose of competing with another entity in the offering of those competitive services, unless the commission finds that such an action would serve the public interest, pursuant to a petition or complaint filed by the public utility, personal notice of which has been served on the owners of the property to be condemned, and an



adjudication hearing in accordance with Chapter 9 (commencing with Section 1701), including an opportunity for the public to participate.

(B) The requirements of this section do not apply to the condemnation of any property that is necessary solely for an electrical company or gas corporation to meet its commission-ordered obligation to serve. Proposed exercises of eminent domain by electrical or gas corporations that initially, or subsequently, acquire property for either commission-ordered electrical corporation obligation to serve and competitive telecommunications services or gas corporation obligation to serve and telecommunications services are subject to paragraph (2) of subdivision (b). For property acquired through the exercise of eminent domain after January 1, 2000, by an electrical or gas corporation solely to meet its commission-ordered obligation to serve, any electrical or gas corporation, or subsidiary or affiliate, that intends to install telecommunication equipment on the property for the purpose of providing competitive telecommunications services shall provide notice for the planned installation in the commission calendar.

(2) (A) Before making a finding pursuant to this subdivision, the commission shall conduct the hearing in the local jurisdiction that would be affected by the proposed condemnation. The hearing shall commence within 45 days of the date that the petition or complaint is filed, unless the respondent establishes that an extension of not more than 30 days is necessary for discovery or other hearing preparation. The commission shall provide public notice of the hearing pursuant to the procedures of the commission and shall also notify the local jurisdiction. In addition, the commission shall provide the local jurisdiction with copies of the notice of hearing in time for the local jurisdiction to mail that notice at least seven days in advance of the hearing to all persons who have requested copies of the local jurisdiction's agenda or agenda packet pursuant to Section 54954.1 of the Government Code.

(B) For purposes of subparagraph (A), "local jurisdiction" means each city within whose boundaries property sought to be taken by eminent domain is located, and if property sought to be taken is not located within city boundaries, each county within whose boundaries that property is located. However, where there is more than one local jurisdiction with respect to a single complaint or petition, the commission shall provide notice and copies of notices for mailing to all local jurisdictions involved, but shall hold only a single hearing in any one of those local jurisdictions.

(3) (A) The assigned commissioner or administrative law judge shall render a decision on making a finding in accordance with this subdivision within 45 days of the conclusion of the hearing, unless



further briefing is ordered, in which event this period may be extended by up to 30 additional days to allow for briefing.

(B) If the rendering of a decision pursuant to this subdivision requires review under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), then the time limits contained in subparagraph (A) of paragraph (2) and subparagraph (A) of paragraph (3) shall be extended as needed to accommodate that review.

(4) This subdivision and Section 626 do not apply to a railroad corporation, a refined petroleum product common carrier pipeline corporation, or a water corporation.

(b) The commission may make a finding pursuant to subdivision (a) if, in the determination of the commission, either of the following conditions is met:

(1) The proposed condemnation is necessary to provide service as a provider of last resort to an unserved area, except when there are competing offers from facility-based carriers to serve that area.

(2) The public utility is able to show all of the following with regard to the proposed condemnation:

(A) The public interest and necessity require the proposed project.

(B) The property to be condemned is necessary for the proposed project.

(C) The public benefit of acquiring the property by eminent domain outweighs the hardship to the owners of the property.

(D) The proposed project is located in a manner most compatible with the greatest public good and least private injury.

(c) The commission shall develop procedures to facilitate access for affected property owners to eminent domain proceedings pursuant to this section, and to facilitate the participation of those owners in those proceedings.

(d) Nothing in this section relieves a public utility from complying with Section 1240.030 of the Code of Civil Procedure or any other requirement imposed by law.

(e) A public utility that does not comply with this section may not exercise the power of eminent domain, including, but not limited to, any authority provided by Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure.

(f) The authority provided in this section supplements, and does not replace or otherwise affect any other limitation in law on the exercise of the power of eminent domain, including, but not limited to, any authority provided by Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure.

(g) (1) At the request of a public utility gas corporation, the commission shall hold the local hearing required in subparagraphs (A) and (B) of paragraph (2) of subdivision (a) and make and certify the finding required by paragraph (1) of subdivision (a) as part of the procedure to issue a certificate of public convenience and necessity.

(2) Notwithstanding any other provision of law, if the commission holds public hearings during the certification procedure for the purpose of making the determination required under paragraph (2) of subdivision (b), the commission shall have an additional 45 days beyond the date of any otherwise applicable statutory or regulatory deadline for making a determination.

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